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Supreme Court, U.S.
FILED
AUG 14 2003
OFFICE OF THE CLERK

No. 02-1371

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF MISSOURI,
Petitioner,

v.

PATRICE SEIBERT,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSOURI

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 10, 2003
CERTIORARI GRANTED MAY 19, 2003

751

TABLE OF CONTENTS

Page

Notice of omitted opinion 1

Relevant Docket Entries 2

Defendant Seibert's Motion to Suppress Statements 4

Defendant's Motion for Judgment of Acquittal, or in the Alternative, Motion for New Trial 6

Transcript of Proceedings:

Suppression hearing 11
Testimony of Richard Hanrahan
Direct Examination 14
Cross-examination 24

Excerpts from the trial testimony of state's witness Richard Hanrahan, including defendant's renewed objection to the admission of her statement to police.
Direct Examination 41
Defendant's objection 42
Direct Examination continued 42
Cross-examination 51

State's Exhibit 37, *Miranda* warning and waiver form executed by Defendant Seibert 63

State's Exhibit 43, transcript of defendant's statement to the police on February 17, 1997 . 65

The opinion of the Missouri Supreme Court, filed December 10, 2002, has been omitted in the printing of this joint appendix because it appears on pages A1-A26 in the appendix to the Petition for Certiorari.

RELEVANT DOCKET ENTRIES

February 17, 1997	Charges filed against Defendant Seibert in the Circuit Court of Phelps County, Missouri, Criminal Division, Case No. CR397-0238FX.
April 21, 1997	Defendant's Motion to Suppress Statements filed.
August 11, 1997	Change of venue to the Circuit Court of Pulaski County, Missouri, Criminal Division, Case No. CR597-1327FX.
February 10, 2000	Suppression hearing held, and motion to suppress denied. [no docket entry made by the Pulaski County Circuit Court; see Trial Transcript, pp. 1, 45]
March 28, 2000	Defendant found guilty of murder in the second degree.
April 20, 2000	Defendant's Motion for New Trial filed.
June 8, 2000	Defendant's Motion for New Trial denied; judgment and sentence entered.
June 19, 2000	Defendant's Notice of Appeal filed in the Circuit Court.
June 23, 2000	Defendant's Notice of Appeal filed in the Missouri Court of Appeals, Southern District, Case No. SD23729.

January 30, 2002	Opinion affirming the judgment of the trial court.
February 14, 2002	Appellant Seibert's Motion for Rehearing or Transfer to the Missouri Supreme Court filed.
February, 28, 2002	Appellant's Motion for Rehearing or Transfer to the Missouri Supreme Court overruled and denied.
March 14, 2002	Appellant's Application for Transfer filed in the Missouri Supreme Court, Case No. SC84315.
April 23, 2002	Appellant's Application for Transfer sustained, and cause ordered transferred to the Missouri Supreme Court.
December 10, 2002	Opinion of the Missouri Supreme Court reversing the judgment of the trial court and remanding for a new trial.
March 10, 2003	Petition for Writ of Certiorari filed.
May 19, 2003	Certiorari granted.

IN THE ASSOCIATE CIRCUIT COURT
IN AND FOR THE COUNTY OF PHELPS
STATE OF MISSOURI

STATE OF MISSOURI,	)	
Plaintiff,	)	Cause No. CR397-238F
	)	
v.	)	Division No.
	)	
PATRICE SEIBERT,	)	
Defendant.	)	

MOTION TO SUPPRESS STATEMENTS

COMES NOW defendant, Patrice Seibert, by and through counsel, and moves this honorable court to suppress evidence of the statements taken from defendant by law enforcement agents which defendant believes the state intends to introduce into evidence against her. The statements were obtained in violation of defendant's rights against self-incrimination, right to counsel, and due process of law as guaranteed by Article I, sections 10, 18(a) and 19 of the Missouri Constitution and the Fifth, sixth and 14th Amendments to the United States Constitution. As grounds, defendant states:

1. Defendant's statements were not voluntary in that, the length of defendant's custody, the nature of defendant's interrogation, and the conditions under which it was conducted were inherently coercive as applied to person of defendant's education, background, and physical and mental condition at the time such interrogation occurred and that defendant was subjected to mental and physical duress prior to and during the interrogation.

2. Defendant's statements were made without the defendant first being advised of her constitutional rights, to wit:

(a) Defendant was not advised in clear and unequivocal terms of her right to remain silent prior to her interrogation;

(b) Defendant was not advised that anything she said could and would be used against her in court;

(c) Defendant was not advised of her rights to consult with a lawyer and to have a lawyer present with her during the interrogation;

(d) Defendant was not advised that a lawyer would be appointed for her if she was indigent; and

(e) Defendant did not knowingly and intelligently waive her right to remain silent, her right to counsel, or her right to have counsel appointed for her.

3. Any alleged statements were the result of an unlawful arrest in violation of defendant's rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and Article I, Section 15 of the Missouri Constitution.

WHEREFORE, defendant moves this court to suppress any evidence concerning any oral, written or recorded statements to have been made to law enforcement officials or other witnesses in connection with this case, for a hearing, and for such other relief as this court deems just and proper.

Respectfully submitted,

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IN THE C UIT COURT OF PULASKI COUNTY
STATE OF MISSOURI

STATE OF MISSOURI,	)	Cause No.CR597-
	)	1327FX
Plaintiff,	)	
	)	Division No.
v.	)	
	)	
PATRICE D SEIBERT,	)	
Defendant.	)	
	)	

MOTION FOR JUDGMENT OF ACQUITTAL, OR IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

Comes now defendant, Patrice Seibert, by her attorneys, and pursuant to Missouri Supreme Court Rules 27.07, 28.03 and 29.11, and all other applicable rules, respectfully moves for a judgment of acquittal, or in the alternative, a new trial. As grounds for this motion, defendant states the following:

1. The trial court erred in overruling and denying defendant's Motion to Suppress Statements. Defendant filed this motion pretrial, on the grounds that the oral statements and the subsequent audio tape recording of it were obtained in violation of defendant's rights. It was not a voluntary statement, defendant did not intelligently and knowingly waive her right to counsel, and defendant was induced to make said statements based upon pretext. The manner in which the statements were obtained was inherently coercive: defendant made said statements while under extreme emotional disturbance and was subjected to psychological duress during said interrogation.

In the early morning hours of February 17, 1997, defendant was awakened from her sleep in a waiting room at St. John's Mercy hospital in St. Louis County, Missouri and arrested on charges of Murder first degree and Arson first degree. Defendant had been living at the

hospital while her son was there as a patient in the burn unit. Rolla police officer Richard Hanrahan and Missouri state fire Marshall Roger Windle, along with St. Louis County police officer Kevin Clinton made the arrest of defendant at the hospital. At both the pretrial hearing on the motion to suppress statements (2/10/2000), and at trial, officer Hanrahan testified that officer Clinton had been specifically instructed by officer Hanrahan and fire Marshall Windle not to advise defendant of her rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966) while transporting her to the St. Louis County police department in Clayton, Missouri. Instead, while driving defendant to the police station, officer Clinton instructed defendant to carefully consider what she was going to say when Hanrahan and Windle interviewed her, never giving her the information that she had the right to remain silent. At the police station in Clayton, officer Hanrahan testified that he and Windle made the decision not to advise defendant of her rights until after they obtained statements from her. At the hearing on the motion to suppress statements, officer Hanrahan testified that this is a deliberate strategy he employs in order to obtain confessions and that he has been trained in this technique. Hanrahan testified at the hearing on the motion to suppress statements that he knew defendant's first "confession" could not be admitted into evidence at trial because of the lack of Miranda warnings, but he believed the same "confession" repeated on an audio taped recording after administering Miranda warnings to defendant was admissible in a court of law. He further testified at the hearing on this motion, that defendant was in custody, was under arrest and was not free to leave. It was only after the officers obtained admissions of guilt from defendant that they advised her of her rights and had her sign a waiver of her rights and make an audio tape recording of her statement. This method of interrogation constitutes a Due Process violation and any subsequent statements should have been suppressed. State v.

Miller, 894 S.W.2d 649 (Mo. banc 1995), Florida v. Ramirez, 739 So.2d 568 (Fla. 1999), Oregon v. Mathiason, 429 U.S. 492, 495, 97 S.Ct. 711, 714 (1977). The subsequent statement or "confession" by defendant constitutes "fruit of the poisonous tree." It is tainted by the illegal method in which the first "confession" was obtained, and advising defendant of her rights pursuant to Miranda does not remove the taint. Wong Sun v. United States, 371 U.S. 471, 488, 83 S.Ct. 407, 417, 9 L.Ed.2d 441 (1963); United States v. Robinson, 932 F.Supp. 1271, 1280 (D.N.M. 1996). The ruling of the trial court resulted in a violation of defendant's rights to Due Process, Equal Protection and reliable sentencing as well as those rights guaranteed by the 4th, 5th, 6th, 8th and 14th Amendments to the United States Constitution and Articles 1 and 2, sections 2, 10, 18(a) 19 and 21 of the Missouri Constitution.

2. The trial court erred in overruling defendant's objections to and admitting into evidence state exhibits 42 and 43. This is the audio taped statement of defendant taken by officer Hanrahan and an accompanying typed transcript of the taped statement. Defendant incorporates by reference all of the arguments and points of law submitted in point 1 of this Motion for New Trial. Defendant renewed her objections to the admission into evidence of her February 17, 1997 statements to police. For all of the reasons contained in point 1 of this motion, state exhibits 42 and 43 should have been excluded. The ruling of the trial court resulted in a violation of defendant's rights to Due Process, Equal Protection and reliable sentencing as well as those rights guaranteed by the 4th, 5th, 6th, 8th and 14th Amendments to the United States Constitution and Articles 1 and 2, sections 2, 10, 18(a) 19 and 21 of the Missouri Constitution.

3. The trial court erred in admitting into evidence over the objections of defendant, state's exhibit 37. Defendant's objection to the admission of this piece of evidence was made pursuant to the pretrial Motion to

Suppress statements, heard on February 10, 2000. This was the warning and waiver form signed by defendant and officer Richard Hanrahan after defendant had given Hanrahan a statement without benefit of Miranda warnings. Defendant incorporates by reference the entire contents contained in points 1 and 2 of this motion and argues that this piece of evidence along with the taped statements of defendant should have been suppressed and excluded from the trial. The ruling of the trial court resulted in a violation of defendant's rights to Due Process, Equal Protection and reliable sentencing as well as those rights guaranteed by the 4th, 5th, 6th, 8th, and 14th Amendments to the United States Constitution and Articles 1 and 2, sections 2, 10, 18(a) 19 and 21 of the Missouri Constitution.

* * *

All of the matters listed within this motion are cited to the Court as violations of defendant's rights to Due Process, Equal Protection, fairness and reliability in sentencing, effective assistance of counsel and all of her rights guaranteed by the 4th, 5th, 6th, 8th, and 14th Amendments to the United States Constitution and Articles 1 and 2, sections 2, 10, 18(a) 19 and 21 of the Missouri Constitution.

Respectfully submitted,

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[Certificate of service omitted in printing]

APPELLANT'S TRANSCRIPT ON APPEAL
NO. 23729-1
IN THE
MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

[Filed March 23, 2001]

STATE OF MISSOURI	)	
	)	
Plaintiff-Respondent,	)	In the Circuit Court of
	)	Pulaski County,
	)	Missouri
vs.	)	
	)	Case No. CR597-
	)	1327FX
PATRICE SEIBERT,	)	
	)	VOLUME ONE
Defendant-Appellant.	)	

APPEAL from the Circuit Court of Pulaski County, Missouri,

Honorable DOUGLAS E. LONG, JR., Judge

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* * * * * * * *

[TRANSCRIPT OF SUPPRESSION HEARING]

[1] February 10, 2000

THE FOLLOWING PROCEEDINGS were held on Thursday, February 10, 2000, before the Honorable DOUGLAS E. LONG, JR., Judge of Division I of the 25th Judicial Circuit of Missouri, at Rolla, Phelps County, Missouri.

MR. ROBERT J. AHSENS III, Assistant Attorney General, of Jefferson City, Missouri, appeared for the

Plaintiff, STATE OF MISSOURI.

MS. BETH A. DAVIS-KERRY, MS. DELORES BERMAN and MR. DAVID A. BRUNS, Assistant Public Defenders, of St. Louis, Missouri, appeared with the Defendant, PATRICE SEIBERT.

oOoOo

THEREUPON, the Defendant appearing in person and with her attorneys, the following proceedings were held at 2:44 p.m. of said date out of the presence and hearing of a jury:

* * *

[2]

THE COURT: Yes, it's pretty well done. We're going to have to have the motion to suppress. She asked us - - she said there was something done at a preliminary hearing.

MS. DAVIS-KERRY: It had been taken up at the preliminary hearing.

THE COURT: Well, . . .

MS. DAVIS-KERRY: And it was going to be my request to the Court that I be granted leave to do . . .

THE COURT: You can readdress those.

MS. DAVIS-KERRY: . . . a motion to suppress on behalf **[3]** of my client.

THE COURT: Absolutely.

MS. DAVIS-KERRY: Okay.

MR. AHSENS: I'm willing to take that matter up today.

THE COURT: We're ready. What other motions do you have that you want to argue this afternoon?

MS. DAVIS-KERRY: That would be the only evidentiary motion.

THE COURT: All right.

MS. DAVIS-KERRY: And then my legal motions that are contained - - there was a motion to suppress evidence in this matter and I don't believe there was any evidence seized from my client.

MR. AHSENS: Not from her person - - no.

MS. DAVIS-KERRY: And we're talking about

evidence taken from the trailer.

MR. AHSENS: Well, I think there were items such as a gas can that was found at the trailer - things of that sort, . . .

MS. DAVIS-KERRY: Right.

MR. AHSENS: . . . but by the same token, it was part of the fire scene.

MS. DAVIS-KERRY: Right - - I don't expect to be arguing the motion to suppress evidence, Your Honor. There **[4]** may be some pretrial motions in limine regarding certain bits and pieces that were taken from the trailer, but not pursuant to a motion to suppress.

THE COURT: When is your trial scheduled?

MS. DAVIS-KERRY: March 23rd.

MR. AHSENS: March 23rd.

THE COURT: Okay.

MS. DAVIS-KERRY: And no - - I won't change with Ruth.

THE COURT: You saw where I was going with that one.

MR. AHSENS: I was going to lay in the weeds because I kind of wondered how you were going to react to that.

THE COURT: You saw where I was going with that one and no - - I won't change with her. This is my client. All right. On the motion to suppress statements, are you ready to call your first witness?

MR. AHSENS: Yes, Your Honor.

THE COURT: You may call him.

MR. AHSENS: The State calls Richard Hanrahan.

THE COURT: Come forward, Officer. Is it still Officer? Yes, it is. Raise your right hand please and be sworn.

RICHARD EDWARD HANRAHAN, being sworn by the Deputy Clerk, testified as follows:

[5] THE COURT: Take the stand please.

THE WITNESS: (Complies)

THE COURT: You may inquire, Mr. Prosecutor.

MR. AHSENS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. AHSENS:

Q Sir, would you tell the Court your full name please?

A Richard Edward Hanrahan.

Q What do you do for a living, Mr. Hanrahan?

A I'm a commissioned police officer for the City of Rolla.

Q And what are your duties with the Rolla City Police?

A I'm a Criminal Investigator. I'm a Supervisor in the Criminal Investigation Unit.

Q Were you performing similar duties, sir, on February 12th, 1997?

A At that time, I was the Criminal Investigator, sir.

Q Okay. With that in mind, sir, did you become involved in the investigation of a trailer fire which resulted in the death of one or more persons at No. 4 Marlette here in Rolla, Missouri, on that date?

[6] A Yes, sir, I did.

Q And how did you first become involved?

A I was first made aware of the fire by Captain Day at the time - - he's a Lieutenant now - - who instructed me to go to the hospital and speak to two subjects who had received some injuries from the fire and were being. treated there.

Q All right. And those two subjects were whom?

A Darian Seibert and Derrick Roper.

Q Did you have occasion, sir, during your visit at the hospital to come into contact with a person you either knew or later became known to you as Patrice Seibert or Seibert?

A Yes, I did.

Q And where was it you came into contact with her?

A In the emergency room.

Q And what was your purpose in contacting her there?

A Actually, she contacted me first - - asked me if I had any news from the fire and told me who she was. I took her to a conference room because I had learned that there were bodies in the fire but I didn't know who they were and I wanted to get more information before I tried to tell her anything.

[7] Q Did - - so at this time, you had some conversation with Patrice Seibert and elicited some information from her. I'm not concerned with the contents of that, but you did have a conversation with her.

A Yes, sir.

Q In the course of this conversation, sir, did you at any time place Patrice Seibert under arrest?

A No, sir.

Q Did you detain her for any purpose other than just to take her aside and talk with her?

A No, sir.

Q And was - - when you spoke with her, sir, after you were finished, where did Ms. Seibert go - - if you know?

A I really don't know for sure. I assume she probably went to St. Louis. I believe her other son was flown there that night or taken there.

Q So after your discussion with her, she remained at liberty.

A Oh, yeah.

Q Did you have occasion to speak with Ms. Seibert again after that particular conversation?

A Yes, I did.

Q And just for the record, so we are clear, is Ms. Seibert present in the courtroom today?

A Yes, sir, she is.

[8] Q Would you point her out please and tell us what she's wearing?

A Okay. She's the lady second from the end closest to me at the table. She's wearing the orange

jumpsuit.

MR. AHSENS: Your Honor, I'd ask that the record reflect the witness has identified the Defendant.

THE COURT: The record will so reflect.

MR. AHSENS: Thank you.

Q (By Mr. Ahsens) When was it you next came into contact with Patrice Seibert?

A I believe it was the 14th of that month.

Q So this would have been two days after the fire.

A I believe so.

Q And what was your purpose in contacting her at that time?

A Myself and Day went up and interviewed her at the hospital.

Q You say Day - - is this - - who is Day?

A Lieutenant Day now.

Q I'm sorry - - thank you.

A That's okay.

Q And what was the purpose of your contact, sir?

A We basically apprised her of the evidence we **[9]** were finding and our concerns that there may have been some foul play on the part of her son and Derrick.

Q Derrick Roper?

A That's correct.

Q And at that time, did you take Ms. Patrice Seibert into custody or place her under arrest?

A No, sir.

Q And was the - - what was the - - was the purpose then of your conversation simply to elicit information or to provide information to her?

A Both, sir.

Q And did you then proceed to have a conversation with her wherein you provided information and gathered more information from her?

A Yes, we did.

Q And after the conclusion of that conversation, where did Ms. Seibert go - - if you know?

A I assume back upstairs to the burn unit.

Q All right. Would it be - - and where did this

conversation taken place, sir?

A At St. John's Hospital in St. Louis.

Q And was - - would it be fair to say then, sir, that Ms. Seibert remained at liberty after your brief conversation with her at that time?

A Yes, sir.

[10] Q Sir, with regard to Ms. Seibert, did you have yet another conversation with her?

A Yes, I did.

Q And when and where did that take place - - if you can tell us?

A It was the early morning hours of the 17th - - that would have been myself and Rodger Windle and Patrice.

Q When you say Patrice, you mean the Defendant here in this courtroom.

A Yes, sir, I do.

Q And you say Rodger Windle - - who is he - - just for the record?

A He's a Fire Marshall for the State of Missouri.

Q What was the purpose of your contacting Ms. Seibert at that time?

A We had her arrested at our request by a Detective with the St. Louis County Police and we conducted an interrogation after the arrest.

Q Where did that interrogation take place?

A At the St. Louis County Police Department's offices in Clayton, Missouri.

Q Did you participate in the actual arrest or was Ms. Seibert simply brought to you in custody?

A I was present at the arrest. I introduced Detective Clinton to her and he identified himself and he **[11]** placed her under arrest.

Q Did you then speak to her at that time or would you wait for some purpose?

A Very briefly.

Q What was the purpose of that brief conversation, if any?

A I believe she said she didn't know what this was

about and I told her - - "Yeah, I think you do. You need to think about it on the way down to where we're going to talk." - - or words to that effect.

Q Was that the sum and substance then of your conversation with her?

A Yes, sir.

Q Did you transport Ms. Siebert to the St. Louis County Police Department or was she transported by others?

A She was transported by Detective Clinton.

Q When you arrived at the St. Louis County Police Department, did you - - you say you spoke with her at that location. Can you describe the room or surroundings in which that conversation took place?

A A very small interview room. You'd be pushing to get two tables like the table you're sitting at into it.

Q All right. So you're describing - - was there sufficient room for you and Ms. Seibert to sit in this room?

A Oh, yes.

[12] Q Was there a table between you?

A There was a table that was along the wall so that basically she sat at the end of the table and I was at the corner of the edge of the table.

Q Was there anyone else in the room with you at the time?

A Mr. Windle was.

Q All right. So at the time then, did you then proceed to interview or interrogate Ms. Seibert?

A Yes, we did.

Q Before - - was this interview or interrogation recorded in any fashion?

A Not at that point.

Q All right. At this point, did you, in fact, apprise Ms. Seibert of her rights?

A Not at that point - - no, sir.

Q So you just - - you simply discussed things without having done so.

A That's correct.

Q Following that discussion, did you then apprise Ms. Seibert of her rights?

A Yes, I did.

Q And did you then proceed to interview her again?

A Yes, I did.

[13] Q And how was it that you apprised Ms. Seibert of her rights?

A I read her her rights from a preprinted form that was provided by Detective Clinton.

Q And do you have a copy of that form with you?

A Yes, sir, I do.

Q Would you get it out please?

A Sure.

MR. AHSENS: For the purpose of this hearing, counsel, I would ask to use a copy rather than the original.

MS. DAVIS-KERRY: No objection.

THE COURT: Okay.

MR. AHSENS: Your Honor, I'm simply going to refer to this as the Waiver form, rather than have it marked.

THE COURT: All right.

Q (By Mr. Ahsens) Sir, I'm going to show you what we're referring to as the Waiver form and ask you if you can tell me what this is?

A Okay. This is a photostatic copy of the Waiver form that I used that night when I read Ms. Seibert her rights.

Q And does that reflect, sir, the acknowledgment on the part of Ms. Seibert as to understanding her rights as you read them?

A Yes, sir, it does.

[14] Q And how is that indicated?

A By her signature under a waiver paragraph and the date and time.

Q And does that also, sir, show some acknowledgment beside each of those rights of her understanding of each of them?

A Yes, sir - - each of the rights is check-marked by

me as I read them and then initialed by her.

Q And did you ask her to initial that to demonstrate any particular understanding?

A Yes, sir - - that she understood each of the rights I had read her.

Q And did she indicate to you that - - verbally and by placing her initials there that she did understand them?

A Yes, sir.

Q Did you then read the waiver and ask her if she were willing to waive her rights and speak with you?

A I don't know if I actually read the waiver to her. I'd have to look back at the transcript - - it's been a long time, but this is tape recorded.

Q All right, sir. And was - - but was that made available to her and did you ask her if she were willing to waive the rights as you had read them to her and speak with you?

[15] A Yes, sir.

Q And did she agree to do so?

A She did.

Q And did she do that verbally as well as signing the form?

A I believe she did - - yes, sir.

Q And does her signature appear on this document?

A Yes, sir, it does.

Q Would you, sir, by pointing, indicate her signature to the Court?

A It would be right here, sir.

Q And did you see her place her signature on the document?

A Yes, I did.

Q And did you and other officers who were present place your signatures on the document as witnesses thereto?

A Myself and Fire Marshall Windle also signed it.

Q And does Sergeant - - Fire Marshall Windle's signature - - did you see that placed on this document?

A Yes, sir, I did.

Q And that is your signature there as well.

A Yes, sir, it is.

MR. AHSENS: Do you wish to see it again, counsel?

MS. DAVIS-KERRY: No, thank you.

MR. AHSENS: I offer the Waiver, Your Honor.

[16] THE COURT: Admitted.

Q (by Mr. Ahsens) Did you then proceed to talk with Ms. Seibert?

A Yes, sir, I did.

Q And did she, during this conversation, provide you with information concerning the fire at No. 4 Marlette and the death of one Donald Rector?

A Yes, sir, she did.

Q And did she - - in addition to that, sir, at any time during your conversation, did she stop the conversation or seek to invoke any of the rights you had read to her?

A No, sir, she did not.

Q And sir, then, as you say, this conversation was recorded.

A That's correct.

Q And was that recording then, sir, placed in evidence?

A Yes, sir.

Q And a transcript prepared.

A That's correct.

Q This room that you were in - - the three of you - - during your conversation, were you or Office Windle armed?

A I honestly don't recall, sir, if I was wearing my sidearm or not.

Q Did you produce that sidearm and show it to the [17] Defendant?

A Oh, no, sir, I wouldn't have done that.

Q Did you threaten her in any way - - . . .

A No, sir.

Q . . . either physically or verbally?

A No, sir. In fact, we used very low conversational

tones in talking to her.

Q In the course of your conversation with her, sir, did you offer her any inducement or promise her anything in order to induce her to speak with you?

A I did not.

Q Did Officer Windle do so?

A No, sir.

Q Were you present during the entire conversation?

A No, sir, I wasn't.

Q Did Ms. Seibert indicate to you - - or pardon me, I believe it's pronounced Ms. Seibert. Did Ms. Seibert indicate to you that she was relying upon any promise?

A No, sir.

Q So with - - you say that there was a time when you were not present. Could you describe what that was about - - what happened then?

A Yes, sir - - I had left the room and gone to the room where Detective Clinton was - - where he was observing - - **[18]** and observed from there for awhile and then I returned.

Q So you were actually observing then the further conversation that took place after you left the room.

A That's correct.

Q And could you hear that conversation as well?

A Yes, sir.

Q And did you hear Officer Windle make any promises to the Defendant or any threats to her?

A No, sir.

Q Thank you. At the conclusion of this particular statement, is the Defendant placed under arrest?

A She had already been arrested – yes, sir.

Q Was she then taken into custody and processed?

A Detective Clinton did that – yes, sir.

Q Did you have any further conversation with her at that time?

A Yes, I did.

Q And when was that?

A Immediately after the interview – the

interrogation.

Q And was that something that was done verbally - - I mean, just a conversation back and forth with you?

A That's correct.

Q Where did that conversation take place?

A In the same room.

[19] Q Was that conversation recorded?

A No, sir.

Q What was - - how long did that subsequent conversation last?

A It wouldn't have been very long. The basic gist of the conversation was she told me that she didn't feel like she had a right to live and alluded to the fact that she wanted to harm herself.

Q And did you pass that information on to officers in order to see to it that she was watched?

A I specifically told Detective Clinton.

Q Did you after that time have any further contact with the Defendant, Patrice Seibert?

A I believe there was one day when I was asked by Ms. Slawson with the DFS to go with her to try to conduct an interview a few days later and I did go, but I was told that she had an attorney and didn't wish to speak to me, so nothing was said.

Q So there was not another conversation you - - but Ms. Slawson is whom - - just for the record?

A She's a caseworker for DFS - - Division of Family Services.

Q And there was some concern there, was there not, because of DFS's interest in the deceased son of Patrice Seibert, Jonathan Seibert?

[20] A Yes, sir.

Q All right. In that regard, sir, do I understand you then to be telling us that there was no conversation at that time?

A No, there was not.

Q Have you had any other conversations with Patrice Seibert at any other times?

A No, sir.

Q Have we now discussed each and every contact you have had with her?

A I believe we have - - yes, sir.

MR. AHSENS: I have nothing further of this witness. You may inquire.

THE COURT: Defense counsel?

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CROSS EXAMINATION

BY MS. DAVIS-KERRY:

Q On February 12th, 1997, the day of the fire, you stated that you had gone over to the Phelps County Regional Medical Center.

A Yes, ma'am.

Q All right. And you said that my client, Patrice Seibert, contacted you first, or . . .

[21] A That's correct.

Q . . . initiated the contact.

A She walked . . .

Q Describe - - . . .

A I'm sorry.

Q . . . describe that for me please.

A She walked out of a treatment room where her son - - or a treatment bay where her son and Derrick Roper were being treated and asked me - - "Are you a police officer?

Q And were you wearing a badge or some sort of uniform to indicate that you were a police officer?

A I was in civilian clothes, but I don't know if I had my jacket on. My badge and weapon might have been visible, or I may have been wearing the pocket badge that I have on now - - I don't recall.

Q All right. Did you know my client before this date in February of 1997?

A No, ma'am.

Q All right. Did you know either of the two other co-Defendants, Derrick Roper or Darian Seibert?

A I had had dealings with Derrick Roper. I had

heard Darian's name.

Q All right. But you did not know Darian Seibert.

A No, ma'am.

[22] Q And you stated that my client asked you if you were a police officer. Can you describe for me the rest of that conversation on February the 12th, of 1997?

A Certainly not word for word, but basically she was asking what had happened - - what could I tell her. When we talked in the conference room, . . .

Q Let me interrupt you if I may. Do you recall specifically what my client was asking you?

A I just recall that she was asking what had happened.

Q All right.

A And I do believe that she asked me if everyone got out or if anybody was hurt and I don't recall the exact words she used.

Q Okay. Anything else on that day?

A Well, yes - - I was the one that had to tell her that Jonathan appeared to have died in the fire.

Q All right.

A Along with Donald.

Q Okay. And her reaction at that time was what?

A She cried - - she appeared to be very distraught.

Q And anything else in that February 12th, 1997, meeting?

A No, ma'am.

[23] Q All right. Let's move on then. I'd like to talk to you about February 14th. By this time, Darian Seibert had been transported up to St. John's Hospital in St. Louis County - - correct?

A That's correct.

Q All right. And you had information that that's where Patrice was.

A Yes, ma'am.

Q And so you and - - was it Captain Day at the time?

A Yes, ma'am.

Q Went up and conducted that interview on

February 14th, of 1997.

A I believe that was the date. I'm ninety percent positive. I could check my reports if you'd like me to.

Q. All right. No, I don't need you to do that at this time. You tape recorded that interview - - correct?

A That's correct.

Q Okay. Now at that time, if I understand what you said the other day, my client was not a suspect.

A That's correct.

Q Okay. But you weren't ruling her out as a suspect at that time, were you?

A I don't know if I had ruled anybody out, other **[24]** than the people who didn't live through the fire.

Q All right. But on the February 14th, 1997, interview in which you tape recorded it, do you recall asking my client if she had been involved?

A Oh, absolutely.

Q All right. Do you recall asking her whether or not she had done anything about putting gasoline inside the trailer?

A Certainly - - we needed to ask that for the record.

Q All right. So you did ask her things that you would ask of somebody who might be a suspect - - correct?

A Certainly.

Q And you tape recorded that.

A Yes, ma'am.

Q All right. And you didn't go through any sort of what we call Miranda warnings or the warning that you read here in Court today on February 14th, did you?

A No, ma'am.

Q All right. Now on February 17th, you make arrangements with the St. Louis County Police Department to arrest my client there at St. John's Hospital in St. Louis County.

A Yes, ma'am.

Q All right. And you do this - - it's actually **[25]** the very early morning hours of February 17th, isn't it?

A That's correct.

Q She's arrested about - - what - - 3:00 in the morning?

A It was about 3:00 - - yes.

Q You make arrangements with a St. Louis County Officer Kevin Clinton to make the arrest there at the hospital.

A Yes, ma'am.

Q All right. So you had some conversation with Kevin Clinton prior to the arrest of my client there at St. Johns - - correct?

A Yes, ma'am.

Q All right. And part of that conversation with Kevin Clinton is where you're telling him your theory of the case and you now believe Patrice is a suspect or a conspirator in this fire and the murder of Donald Rector.

A Yes, ma'am, I'm sure it was.

Q You tell him to - - you tell that to Kevin Clinton.

Q I'm sure I did - - yes.

A All right. And you have a plan for how you want to conduct the interview of Patrice on February 17th, don't you?

A Yes, ma'am.

[26] Q And you call it a two-stage interviewing process or a two-stage interrogation.

A Yes, ma'am.

Q All right. And I'm getting this information - - for the record, you testified in a Preliminary Hearing . . .

THE REPORTER: Excuse me - - Mr. Ahsens, could you please - - that comes through on the microphones real . . .

MR. AHSENS: I beg your pardon.

THE REPORTER: Thank you.

Q (by Ms. Davis-Kerry) You testified at the Preliminary Hearing in the case against my client, didn't you?

A Yes, ma'am.

MS. DAVIS-KERRY: All right. Your Honor, for the record, I'd ask the Court to take judicial notice of the

contents of Officer Hanrahan's testimony that would be contained within the Preliminary Hearing transcript.

THE COURT: Notice taken.

MS. DAVIS-KERRY: Thank you.

Q (by Ms. Davis-Kerry) In getting back to that, that's where I get the information. You are - - in that proceeding, you're talking about your intentional two-stage interrogation process - - correct ?

A Yes, ma'am, I'm sure I did.

Q All right. So after you filled Officer Clinton - - St. Louis County Officer Kevin Clinton in on your theory of **[27]** the case and your desire to have him assist you in arresting my client, you also tell him that you don't want him to question her and you don't want him to read her her rights - - is that correct?

A That's correct.

Q Okay. You specifically did not want him to read her her rights.

A That's correct.

Q All right. And when we talk about her rights, we're talking about the rights that you've recited here in Court - - also known as the Miranda rights.

A I don't know if I recited them here, but . . .

Q All right.

A . . . yes, ma'am.

Q Okay. Would these be the rights that are contained within the warning and waiver form that's been admitted as an exhibit in this matter?

A Yes, ma'am.

Q Okay. Officer Clinton is the one that transports my client from St. John's Hospital to an interrogation room there in St. Louis County - - correct?

A Yes, ma'am.

Q And that's when you and Fire Marshall Rodger Windle then take over the interview of my client.

A We waited fifteen to twenty minutes, but then **[28]** we went in and talked to her - - yes, ma'am.

Q Okay. And the purpose of waiting fifteen or twenty minutes was what?

A Let her settle down in the room - - . . .

Q All right.

A . . . give her a little time to think about the situation.

Q Did you tell Officer Clinton prior to the arrest of my client or perhaps prior to the actual start of your interviews with my client there in St. Louis County, that you believed she expected to be arrested and you believed she would have a story rehearsed?

A Yes, sir, I did - - I'm sorry - - yes, ma'am. I did. I apologize.

Q That's okay - - I've been called worse. Your reason for telling that to Officer Clinton was what?

A It's what I believed. I didn't see any reason not to tell him that.

Q Now there was a tape recording of your interview with my client on February 17th of 1997 - - correct?

A The second part of it - - yes, ma'am.

Q And that's the second stage of your interrogation technique.

A Yes, ma'am.

Q So in the first stage, you and the Fire Marshall **[29]** Windle interview my client and speak to her about the case.

A (Nods head yes)

Q You tell her - - you're nodding your head yes. Is that a yes?

A Yes, ma'am.

Q All right. You tell my client that you already know that she is - - what - - guilty or involved in this matter?

A Yes, ma'am.

Q All right. And you continue to tell - - well, let me get to this. Let me go back if I may - - and I apologize - - to your interview - - your taped interview with my client on February 14, 1997.

A Yes, ma'am.

Q All right. At that point, you're saying that you had not ruled her out as a suspect - - correct?

A That's true.

Q All right. And it's in that interview - - February 14th, of 1997, where you asked her if she had anything to do with the fire and/or the murder of Donald Rector. In that same interview, you also were providing her this information from you about your belief that no one intended to kill Donald - - you believed it was a fight that broke out.

A Yes, ma'am.

Q Okay. You told that to her on February 14th, **[30]** of 1997.

A I'd say it's one of many things we told her that day.

Q Okay. Now on February 14th, when you told her that you believed that this was as a result of a fight that broke out between Darian Seibert and Derrick Roper and possibly Donald Rector that resulted in Donald's death and the burning of the trailer, did you believe that to be the truth or was that a falsehood?

A I believed that was a good possibility.

Q Okay. At the time, you believed it.

A It was a theory.

Q It was a theory.

A Yes, ma'am.

Q All right. So you weren't just lying to her on February 14th.

A No, ma'am.

Q Now moving back if I could then to the February 17th matter, the information that is contained in the tape recording was largely a repeat of information that you and Fire Marshall Windle obtained from Patrice before turning the tape recorder on - - correct?

A That's correct.

Q All right. And in that first stage - - let's call that the first stage of the interrogation before the tape **[31]** recorder was turned on.

A Okay.

Q You interviewed her - - what - - some twenty minutes perhaps - - twenty to thirty minutes?

A I'd say that's probably accurate.

Q All right. And in that, you do not read her her Miranda rights, do you - - her rights to remain silent?

A No, ma'am, we didn't.

Q And that was a conscious decision on your part.

A Yes, ma'am.

Q Because you wanted to see what she was going to say.

A It's part of a tactic I've been trained in and used before, and yes, ma'am, that's the main reason you're doing it.

Q But you know that you are up there now. You have arrested someone - - correct - - or you have this person under arrest?

A Yes, ma'am.

Q And this person's not free to leave.

A No, ma'am, she's not.

Q And this person is in an interrogation room.

A That's correct.

Q And it is your full intent to go and interrogate this person.

[32] A Yes, ma'am.

Q All right. And gain some sort of confession or admission of guilt - - correct?

A That's our hope - - yes, ma'am.

Q And that's your intent.

A Absolutely.

Q All right. And it is also your conscious decision not to inform her of her rights under the law of Miranda - - the case law.

A Not at that point.

Q You say this is something you were trained in.

A Yes, ma'am.

Q Can you tell me about that training? Where were you trained in this form of interrogation?

A Let's see - - I believe the National Law Police Institute, who provides computer training to departments all over the country, has put this out numerous times. My department here subscribes to

their training. The departments I was with previously to coming here subscribe to it. I did produce training documents from them - - literature from them on this after the preliminary and I'd be happy to do it again.

Q Oh, all right. I'm sorry, I was not aware of that.

A That's okay.

Q Okay. Yes - - I would like to see those.

[33] A I don't have them with me, but I do have them at my office.

Q Understood.

MR. AHSENS: Counsel, if you'll provide the witness your address, I'm sure he can mail it to you directly.

MS. DAVIS-KERRY: Will do - thank you.

Q (By Ms. Davis-Kerry) How long ago were you trained in this sort of interrogation technique?

A Specifically, I couldn't tell you the exact dates. We take a monthly computer training and it's come up in it numerous times. I couldn't tell you which month or year the last one was.

Q When you say computer training, you mean training via the computer - - . . .

A That's correct.

Q . . . information that's coming over the computer.

A Well, a disc is sent to the department and it has scenarios for different basic training situations.

Q What do you understand the law on this matter to be?

MR. AHSENS: Objection - - what he understands the law to be is irrelevant.

THE COURT: Sustained.

Q (by Ms. Davis-Kerry) Within the training that **[34]** you've received in this two-stage interrogation technique, are you trained in any safeguards within the technique to weed out what we call volunteer or false confessions?

A Within that specific technique, I don't recall any. I have been trained in that. I've been to training in several other types of interview and interrogation.

Q What about - - did this training - - this

interrogation technique, does it take into account the state of mind of the person being interrogated?

MR. AHSENS: Your Honor, at this point - - and I don't want to cut this off entirely, but I'm going to object at this point. I think we're straying rather far afield from the issues in this particular motion.

THE COURT: Do you have some specific reason for inquiring in that area, ma'am?

MS. DAVIS-KERRY: Yes, I do, Your Honor.

THE COURT: You may continue.

Q (by Ms. Davis-Kerry) Does it take into account the state of mind of the person you're interrogating?

A I don't recall anything in it about the state of mind.

Q Part of this technique - - does it also include that you keep asking the same question until you get the answer you want?

A No, ma'am.

[35] Q All right. Because I noticed in the transcripts that there are times where you ask a question of my client and then she doesn't provide an answer - - or she gives you an answer but you ask the question again and she gives you the same answer she had previously given and you ask the question again until she changes her answer, and I'm wondering - - is that part of the technique that you're trained in?

A No, ma'am - - that's just basic question and answer.

Q To ask the same question over and over again until you get the answer you want.

MR. AHSENS: I'm going to object to her characterization, sir, of that particular process.

THE COURT: Overruled.

THE WITNESS: Not until I get the answer I want, ma'am - - until I get the answer that she's already provided once.

Q (by Ms. Davis-Kerry) Okay. So this was information that you had without the benefit of Miranda warnings to my client and then you go ahead and you

make a taped statement of the same information and that's when you provide the Miranda warning - - correct?

A Before the taped statement - - yes, ma'am.

Q But after the first stage of the interrogation.

[36] A Yes, ma'am.

Q And it's a conscious decision on your part not to provide the Miranda warning at the first stage.

A During the first stage - - yes, ma'am.

Q And this - - you begin your interview of my client on February 17th, of '97, at around 3:45 a.m. - - is that correct?

A I believe that's probably correct. I've got it a couple of pages down in my file - - I can tell you the exact time.

Q Do you have your file there in front of you?

A Yes, I do.

Q Could you tell me what your file reflects please?

A Certainly. No - - the tape version began at about 4:30 and the first time myself and Windle talked to her was about 3:45.

Q Let me talk to you about the first stage of the interrogation - - the statement you got from my client on February 17th. Did you make any notes on that?

A I don't believe I did - - no.

Q You didn't make any notes in the first stage interrogation.

A I don't recall writing any notes.

Q Do you recall whether or not there were any **[37]** differences in her answers to you between the first stage of that interrogation on February 17th, 1997, and the second stage that was tape recorded?

A If there were, I believe they were very minor. I don't recall specifics.

Q And you wouldn't have made notes of that - - any differences - - correct?

A I think I would have mentioned it during the tape recoding.

Q You think you would have mentioned it.

A I should have.

Q What about my client asking you whether or not she could attend her son, Jonathan Seibert's funeral? Do you recall her asking you that in the interview - - the February 17th interrogation?

A I don't know. I don't recall her asking that.

Q Okay.

A She very well could have.

Q So there are things that she might have said that you don't recall unless it was contained on the tape - - is that right?

A That's possible.

Q In the first stage of that interrogation when you were speaking to my client, at some point in that interrogation, she told you that there was no plan or **[38]** intention to have anyone die in that fire - - correct?

A Yes, ma'am.

Q And she told you that in the first stage.

A Yes, ma'am.

Q In that part that's not on the tape recording - - correct?

A Yes, ma'am.

Q Okay. So the part that's on the tape recording is after you questioned her on that matter repeatedly and she finally says yes - - is that correct?

A Well, I detailed the questioning as well as I was capable of in my reports and I'm sure that that's one of the first things that she said.

Q Okay. And again, so the first part is a deliberate decision on your part not to provide her with her Miranda rights until after you get the information you're seeking and that's when you decide to give her the Miranda rights and make a tape recording.

A The way you characterize it isn't quite the way I was trained. Basically, you're rolling the dice. You're doing a first stage where you understand that if you're told something that when you do read the Miranda rights, if they invoke them, you can't use what you were told.. We were fully aware of that. We went forward with the second stage, read Miranda, and she repeated the

items she had told us.

[39] Q It's your belief then if you get information from her prior to giving her her Miranda warning and then you give her her Miranda warning and she invokes her right, that you can't use the information from the first stage.

MR. AHSENS: Well, Your Honor, objection. His belief is irrelevant.

THE COURT: Sustained.

MS. DAVIS-KERRY: Well, I'm just trying to follow up on something.

THE COURT: Sustained.

Q (by Ms. Davis-Kerry) When you said rolling the dice in this two-stage process, you're not saying that you have to live with the answers you get in the first stage.

A I'm not sure I understand what you're saying.

Q Okay. And that's what I'm not sure either - - what you're saying back to me. Tell me again - - you tell me that you roll the dice when you perform this sort of two-stage interrogation - - correct?

A Yes, ma'am.

Q Why do you refer to it as rolling the dice?

A You may not get any information at all.

Q In which part of the interrogation?

A In either part. You may never even go to the second stage.

Q But you did go to a second stage in this matter **[40]** - - in this interview.

A Yes, ma'am.

Q Although in the first stage my client told you she had nothing to do with this - - correct?

A Yes, ma'am - - initially she told us that.

Q And then you kept asking her and telling her that you knew differently - - is that correct?

A We explained some of the evidence to her - - explained some of the situation to her and she changed her story.

Q She changed her story.

A Yes, ma'am.

Q But her first answers to you, without benefit of Miranda, was that she had nothing to do with it.

A That's true.

Q And then you continued in that vein - - that line of interrogation with her, telling her you knew that to be different - - correct?

MR. AHSENS: Your Honor, I'm going to object. We're plowing the same ground again. I think this has been asked and answered.

THE COURT: Overruled.

Q (by Ms. Davis-Kerry) I'm talking about the first stage without benefit of Miranda warning. Although my client says to you - - I had nothing to do with it. She tells **[41]** you that there was no intention for anyone to die in that fire, you continued to interrogate her until she agrees with you that there was a plan for Donald Rector to die in the fire - - correct?

A I continued to interrogate her until she told me the truth.

Q And that was that there was a plan for Donald Rector to die in the fire - - that's what you're saying the truth is.

A That's what she told me the truth was.

Q But she first tells you that there was no plan.

MR. AHSENS: Your Honor, objection again. How many times . . .

THE COURT: Sustained.

MR. AHSENS: . . . do we need to go through this?

THE COURT: Sustained.

Q (By Ms. Davis-Kerry) And all of this was without the benefit of Miranda.

A Yes, ma'am.

Q And in fact, in the second stage, the only thing that is included in your tape recording is an admission by my client.

A I believe she pretty much admits to it - - yes, ma'am.

Q And you don't include the fact that she tells **[42]** you prior to that that there was no plan for anyone to die

in the fire.

A That's in my report, ma'am.

MS. DAVIS-KERRY: I don't have anything further.

MR. AHSENS: No further questions.

THE COURT: May this witness be excused?

MR. AHSENS: Yes, Your Honor.

THE COURT: You're excused, Officer - - thank you.

THE WITNESS: Thank you, sir.

MR. AHSENS: May he retrieve that one exhibit, Your Honor? It is from his file.

THE COURT: As far as I'm concerned. Is there something he needs to give to you today? You were going to give him your address so he could forward the training materials.

MS. DAVIS-KERRY: Yes.

MR. AHSENS: You need to retrieve that Waiver from the Bench.

THE COURT: Excuse me - - I have that up here.

oOoOo

MR. AHSENS: I have no further evidence on this motion, Judge.

THE COURT: Fine.

[43] MS. DAVIS-KERRY: That's all I would have on the matter. Do you want argument now or . . .

THE COURT: Yes.

MS. DAVIS-KERRY: All right. I think that my client - - well, I argue that my client's statements should be suppressed for a number of reasons - - the first being that no probable cause for her arrest was established in this matter. The second is this - - what I believe is a big Miranda problem wherein they deliberately go out and get information - - incriminating information, choosing not to provide someone who is already in custody with the benefit of the Miranda warnings until after they get the information they want, and then they provide the warning and waiver forms and repeat the information. So it may be argued that what we are referring to as the

first stage interrogation may not be admissible, but the second stage should be. My argument to the Court in anticipation of that is the second stage is fruit of the poisonous tree and that none of it should be admitted.

THE COURT: Thank you. Mr. Ahsens?

MR. AHSENS: Fruit of the poisonous tree, Your Honor, more appropriately refers to when you have a statement that is the result of an improper arrest. Here you have an arrest based on information elicited from co-Defendants, as the officer mentioned, that led to her arrest - - that she was involved - - that led them to arrest her. I think that's **[44]** patent from what we have here. Further, you have in this particular instance a conversation with her which produced incriminating information - - a waiver of - - or administration of rights - - an appropriate administration thereof and waiver thereof, after which the Defendant gives a statement which is incriminating. I think the fruit of the poisonous tree doctrine also makes it fairly clear that once you read those Miranda rights, any taint is removed from anything that comes thereafter. And I don't believe under either theory that the second portion of that conversation should be suppressed - - that is the recorded portion. And I take it that the prior conversations on different tapes are really not at issue.

THE COURT: Well, the prior - - prior custodian . . .

MR. AHSENS: Precustodial conversations.

MS. DAVIS-KERRY: Precustodial.

THE COURT: Precustodial stuff is certainly outside the scope of this motion. We actually have three times that we're talked to.

MR. AHSENS: Yes, sir - - the 12th, the 14th and the 17th, respectively.

THE COURT: Okay. And they're not using the information that they found out in the second - - in the custodial - - in first level interrogation or prior interrogation - - first level of the interrogation, but rather using the second interrogation . . .

[45] MR. AHSENS: Yes, sir - the post Miranda.

THE COURT: . . . after she was advised of her Miranda rights. I'm sure we're - there are lots of cases on that. The motion is denied. So we'll see what happens.

MS. DAVIS-KERRY: May I have leave of Court to federalize?

THE COURT: Excuse me?

MS. DAVIS-KERRY: May I have leave of Court to federalize my objection to the ruling?

THE COURT: Absolutely.

MS. DAVIS-KERRY: Thank you. Defendant objects to the ruling of the Court on the grounds that it violates her rights pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, as well as her rights guaranteed by equal protection and due process of law, reliable sentencing and fairness at trial, also those rights as guaranteed her by Article I, Sections Two, Ten and Eighteen (a) of the Missouri Constitution.

[TRIAL TESTIMONY OF RICHARD HANRAHAN]

[763]

RICHARD HANRAHAN, being sworn by the Deputy Clerk, testified as follows:

THE COURT: Take the stand please.

[764] THE WITNESS: (Complies)

DIRECT EXAMINATION

* * *

[775]

Q (by Mr. Ahsens) Did you have, on the evening of the fire or early the next morning, some contact with a Patrice Seibert?

A Yes, sir, I did.

Q And where did that occur?

A My first contact with Ms. Seibert was at the hospital the night of the fire.

Q And what was your purpose in contacting her there?

A Actually, I was trying to get to the scene - - Captain Day wanted me there - - and she came out of the treatment area that Mr. Roper and Mr. Seibert were in. She asked if I was a police officer and asked if her other son got out of the trailer.

[776] Q And did you tell her that he had not?

A Not immediately. I took her to a conference room. I knew that there were possibly two bodies in the trailer, but I didn't have any details at that time.

Q Did you inform her of what you did know?

A No, sir. At that point, I told her that I needed to get some more facts. I found out that she preferred a certain individual from the waiting room to come back and be with her and then I made some phone calls away from her to confirm what was going on.

Q All right. Did you - - were you the one who eventually notified her of Jonathan Seibert's death?

A Yes, I was.

* * *

[831]

MS. DAVIS-KERRY: I would renew my motion to suppress the statements at this time, Your Honor, that has already been heard and ruled on.

THE COURT: Right. The motion, again, is denied and you may have it federalized - - your objection.

* * *

[911]

RICHARD HANRAHAN, having been previously sworn, took the stand and testified as follows:

THE COURT: You may inquire.

MR. AHSENS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR AHSENS:

Q Detective Hanrahan, I'd like to turn now to February 14th, 1997 - - two days after the fire at the Seibert trailer.

A Okay.

Q Did you have occasion to go to St. Louis, Missouri, to St. John's Hospital to speak with Patrice Seibert?

A Yes, sir, I did.

Q With regard to that conversation, is this with the same woman that you identified earlier as the person you knew as Patrice Seibert?

A Yes, sir.

[912] Q Where did you meet with her?

A Well, we initially talked briefly near the Burn Unit and then we ended up talking - - myself, her and Roy Day talked in the security offices.

Q Did you place - - was the Defendant under arrest at the time?

A No, sir.

Q So this was just an interview.

A That's correct.

Q When you spoke with her, sir, did you speak

with her about what she might know concerning the facts surrounding the burning of her trailer?

A Yes, we did.

Q And sir, what did you ask her, if anything?

A We asked her some very direct questions as part of the investigation - - did she know anything about how the trailer burned.

Q Did she state whether she knew or not?

A She didn't know.

Q She said she did not know.

A That's correct.

Q Did she indicate to you, sir, what her movements were on the later afternoon and evening of February 12th, 1997?

A Yes, sir, she did.

[913] Q What did she tell you?

A She told us that after she put her smaller children on the church bus, she had left in a taxi and gone to a friend's house and when the friend wasn't home, she had walked down to another friend's house and been there.

Q Did she indicate how long she had been at this other friend's house - - how long she spent there?

A She was there until she said someone came and got her and told her to come to the hospital.

Q And was that then after - - was that when she told you she learned about the fire?

A That's correct.

Q Did you ask her whether there was any gasoline stored in her trailer?

A Yes, we did.

Q And what was her response to that, if anything?

A No, there was not.

Q Did you ask her about Darian Seibert, her son, and Derrick Roper?

A Yes, we did.

Q Did she indicate whether she had seen them on the late evening - - or late afternoon and evening of February 12th?

A Yes - - she named them as two of the people that were at the trailer when she left.

[914] Q Who did she say was present at the trailer when she left?

A Derrick Roper, Darian Seibert, Jonathan Seibert and Donald Rector.

Q Did she say what these four persons were doing when she left?

A She specified that Jonathan was in the front bedroom - - the bedroom closest to Marlette Street - - in bed, and that Donald was on the couch in the back bedroom sleeping.

Q All right. Did she indicate to you that Jonathan Seibert had died?

A No, sir.

Q All right. What were the other two doing as far as she told you?

A I don't recall her specifying what they were doing when she left. I recall she had said that prior to her leaving, Derrick Roper had been playing ball with the younger kids outside.

Q Well, in talking with her, did you ask her specifically if she was involved in any way in the fire at her trailer?

A Captain Day did - - yes, sir.

Q And what was her - - was that in your presence?

A Yes, sir.

Q And what was her response?

[915] A No, she wasn't involved.

Q Did you ask her specifically if she had any knowledge as to how Donald Rector was killed?

A Yes, we did.

Q And what was her response, if any?

A She had no knowledge.

Q Did you ask her whether she had been told by Derrick Roper, or anyone else for that matter, about the fire being set prior to and actually being set?

A Yes, we did.

Q And what was her response to that, if anything?

A That she hadn't and that she'd only had a brief chance to talk to Derrick Roper.

Q Did you ask her whether she had asked anyone to lie or cover for her in this matter?

A Yes, we did.

Q And what was her response to that, if anything?

A That she didn't. As a matter of fact, sir, it may have been that we asked her if anyone had asked her to lie or cover for them.

Q I beg your pardon - - I may have misstated that. And did anyone - - did she indicate whether anyone had.

A She said no one had.

Q Did you confront her with the statement that was made to you by Darian Seibert to the effect that he went **[916]** home, walked in, turned on the light and the fire began?

A We told her about that statement - - yes, sir.

Q Okay. And what did she have to say about that, if anything?

A After discussing the statement, initially she said that it couldn't be true and then she eventually said that she agreed that it had to be a lie.

Q Was that pretty much the substance of that conversation with her?

A Yes, sir - - pretty much.

Q I understand there may have been many other things that were discussed, but was that the basic substance of it?

A Yes, sir.

Q So she indicated no knowledge whatsoever of how this event came to pass.

A That's correct.

Q Did you have a second conversation with her sometime later?

A Yes, sir, I did.

Q And when did that conversation take place?

A The early morning hours of the 17th.

Q And where did that conversation occur?

A In the offices of the St. Louis County Police

Department.

[917] Q And is that somewhere near St. John's Hospital?

A It's in Clayton. It's not a long drive. I think it took us five to ten minutes to drive it.

Q And was that someplace that you deliberately took the Defendant to speak with her?

A Yes, sir - - I had her taken there.

Q And was she under arrest at that time?

A Yes, sir, she was.

Q And did this conversation happen after you had had other conversations with Derrick Roper and Darian Seibert?

A Well, another conversation with Derrick Roper.

Q And it was based on what you learned there that you placed her under arrest and brought her in for questioning.

A That and a statement that was taken at the station the same evening from one of the people that knew Roper.

Q When you arrived at the station, you had an initial conversation with her - - is that correct?

A That's correct.

Q After that initial conversation, did you inform the Defendant of her rights under the Miranda decision?

A Yes, I did.

Q I'd like to hand you what's been marked as State's Exhibit 37 and ask you if you can tell me what this is **[918]** please?

A Yes, sir - - this is a rights advisement provided by the detective with St. Louis County that night.

Q And was that, in fact, read to the Defendant?

A Yes, sir, it was.

Q And did you ask her if she understood each of those rights as you read them to her?

A As I read them to her, I simply check-marked them when I was finished. I asked her if she understood each right.

Q Did she indicate to you in some fashion whether

she did or not?

A Yes, she did

Q And what was her response in each case?

A She indicated that she understood and she signed next to each of the rights to state that she understood.

Q And sir, did you then read the waiver portion of the form?

A I believe I let her read the waiver I'd have to check my report to be sure. I usually allow the suspect to read the waiver.

Q How does that waiver read?

A It says - - "I have read the above statement of my rights and I understand what my rights are. I am willing **[919]** to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me."

Q In fact, did you threaten the Defendant in any fashion?

A I did not.

Q Did you display a weapon or threaten a weapon - - I mean, you can do things that are non-verbal. Did you do anything that would be taken as threatening by the average person?

A I don't believe so - - no, sir.

Q Did you promise the Defendant any benefit of any kind in order to induce her to speak with you?

A The truth would make her feel much better.

Q Was that all you said?

A I believe so. I told her I believed that she was lying and the lie was hurting her.

Q Sir, did you, in fact, ask her to sign that form if she understood her rights and agreed to speak with you?

A Yes, sir, I did.

Q And did the Defendant do so in your presence?

A Yes, sir, she did.

Q Would you point out her signature to the Court

[920] please?

A (Complies)

Q And sir, did you sign that form yourself as a witness?

A Yes, sir, I did.

Q And was anyone with you who also signed that form?

A Fire Marshal Rodger Windle was also there.

Q And are both your signatures then present on that form as witnesses to her signature and waiver of having been informed and waiving her rights?

A Yes, sir, they are.

Q Would you point out your signature and Officer Windle's signature please?

A (Complies)

MR. AHSENS: Your Honor, I offer State's Exhibit No. 37.

MS. DAVIS-KERRY: Objection pursuant to the previously filed motion to suppress, Your Honor.

THE COURT: All right. Noted for the record - - you may have that federalized.

MS. DAVIS-KERRY: Thank you, Judge.

THE COURT: The objection is overruled. Admitted.

Q (by Mr. Ahsens) Did you then proceed to talk with the Defendant and to interview her about her knowledge **[921]** about this incident at her trailer?

A Yes, we did.

Q And did she tell you what had happened?

A Yes, she did.

Q And did she admit involvement in it?

A Yes, sir, she did.

MR. AHSENS: Your Honor, I have transcripts. I'd ask that the tape be brought forward. I need to check and make sure the tape is immediately available. It's my intention to play the tape, and counsel and I have agreed that we can pass transcripts out to the jury that they may read along as the tape is played.

THE COURT: All right.

MR. AHSENS: Let me check on that, if I may.

(Pause in proceedings. No recess taken.)

MR. AHSENS: My apologies, Your Honor.

MS. DAVIS-KERRY: Judge, could we approach the Bench before this starts please?

THE COURT: Yes, you may.

MS. DAVIS-KERRY: Thank you.

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[922] AT THE BENCH:

THE COURT: Yes, ma'am.

MS. DAVIS-KERRY: Judge, I would just ask for a cautionary instruction at this time. Should there be any deviance - - and I don't expect that there will be - - but any deviance between the actual tape and the transcript, that the jury be instructed that the tape is the best evidence.

MR. AHSENS: Absolutely.

THE COURT: All right.

MS. DAVIS-KERRY: Thank you, Your Honor.

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IN OPEN COURT

THE COURT: Ladies and gentlemen of the jury, let me caution you - - in listening to this tape and reading the transcripts you've been - - have they been furnished with their transcripts yet? No.

MR. AHSENS: We have not yet done that, sir.

THE COURT: All right. They're going to furnish you with transcripts of the recording. In case there's any deviance between the transcript and the tape - - the actual recording, you're to be guided by your recollection of the recording, rather than the transcript. All right. You may proceed, counselor.

[923] MR. AHSENS: Thank you, Your Honor.

Q (By Mr. Ahsens) Sir, I want to show you what's been marked as State's Exhibit No. 42 and ask you if

you can tell me what's contained therein?

A It's a microcassette tape recording of the interrogation of Patrice Seibert.

Q And is that of the same interview that you had with her at the St. Louis County Police Department on the morning of February 17th, 1997?

A Yes, sir.

Q Would you open the exhibit please?

A (Complies)

Q Is that indeed the cassette, sir, and do you recognize your mark?

A Yes, sir, that's the cassette.

Q Thank you. Sir, I also want to show you what's been marked for purposes of identification as State's Exhibit No. 43 and ask you if you can tell me what that is?

A This is a copy of the transcript that was done of the tape.

Q And did you review the tape with that transcript in an effort to ensure its accuracy?

A Yes, sir, I did.

Q Were there portions you could not understand clearly?

[924] A Yes, sir.

Q And how were those reflected in the transcript?

A They're reflected as inaudible.

Q All right, sir. Did you then ensure that that transcript was as accurate as it could be?

A Yes, I did.

MR. AHSENS: Sir, at this time I would offer 42 and 43.

MS. DAVIS-KERRY: Objection based on previously filed motions, Your Honor.

THE COURT: All right. Again, that's federalized for you, counselor, and overruled.

MS. DAVIS-KERRY: Thank you, Your Honor.

THE COURT: Admitted.

MR. AHSENS: If I may at this time, sir, I'd like to pass copies of Exhibit 43 to the jury for their use.

THE COURT: You may do so.

MR. AHSENS: Your Honor, at this time, with the Court's permission, I propose to play the tape. It's my intention to set the recorder on the bar in front of the jury so it will be best audible to them.

THE COURT: All right.

THEREUPON, State's Exhibit No. 42 was started for the jury with the following discussion.

THE COURT: Can't hear that, counselor. Would you **[925]** put that next to a microphone?

MR. AHSENS: I'm turning the volume all the way up as well, Judge.

THEREUPON, State's Exhibit No. 42 was played for the jury in full at this time.

THE COURT: Collect the transcripts please.

MR. AHSENS: By the Bailiff's count, we have retrieved all copies.

THE COURT: All right.

Q (By Mr. Ahsens) Officer, was that then the sum and substance of your - - the recorded interview with the Defendant?

A Yes, sir, it was.

MR. AHSENS: I have nothing further of this witness. You may inquire.

MS. DAVIS-KERRY: Thank you, Your Honor.

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CROSS EXAMINATION

BY MS. DAVIS-KERRY:

Q When you went up to St. Louis County to arrest my client, it was about 3:00 in the morning when she was actually arrested - - is that right?

A About that.

[926] Q Okay. And you had asked for assistance from a St. Louis County officer.

A That's correct.

Q Named Kevin Clinton.

A Yes, ma'am.

Q Okay. Now when you went up to St. Louis County, you went up with the - - I guess a strategy on how you were going to go about getting a statement from my client - - correct?

A Yes, ma'am.

Q All right. And part of that included the fact that you wanted to talk to her first before advising her of any of her Constitutional rights - - correct?

A That's correct.

Q All right. And you did not want Kevin Clinton, the St. Louis County officer who was going to assist in this arrest, to advise her of her Constitutional rights either.

A No, I didn't, but he didn't actually assist. He made the arrest - - I couldn't make the arrest.

Q Right - - because it wasn't your jurisdiction.

A That's correct.

Q Okay. But you had told Officer Clinton from St. Louis County that you did not want her advised of her rights - - is that correct?

A That's correct.

[927] Q Because you wanted her to talk.

A Certainly.

Q All right. And so you go up and she's at the hospital where Darian is - - correct?

A No - - she's in the waiting room.

Q All right. But this is at the hospital where Darian is.

A That's correct.

Q All right. And she's sleeping in the waiting room - - isn't she?

A That's correct.

Q All right. And you have to wake her up.

A Yes, ma'am.

Q Okay. So it's 3:00 in the morning, you wake her up in this hospital waiting room and you have Clinton place her under arrest.

A That's correct.

Q All right. Now you know that she's been through

the loss of one son, that being Jonathan - - correct?

A Yes, ma'am.

Q And she's there at the hospital with the potential of losing Darian due to his injuries - - is that right?

A That's correct.

Q Okay. Did you take into account that this **[928]** woman might be grief stricken?

A I would expect that she was feeling some grief - - yes, ma'am.

Q Okay. In fact, she showed you grief throughout your interview with here - - didn't she?

A Throughout the interview?

Q She showed you grief - - she was upset - - is that right?

A Yes, ma'am.

Q In talking about her children.

A Yes, she cried some.

Q And in talking about this incident.

A Yes, ma'am.

Q All right. And when you say to her that you believed she was truly sorry, you were telling her the truth - - weren't you?

A The truth as I knew it?

Q You told her that you believed she was truly sorry.

A I told her that - - yes, ma'am.

Q You lied to her then.

A I wasn't entirely truthful - - no.

Q Okay. So you lied in order to get certain things - - is that right?

MR. AHSENS: I'm going to object to that, Your **[929]** Honor. This statement has been heard in its entirety by this jury and the efforts of counsel to characterize it are improper.

THE COURT: Sustained.

Q (By Ms. Davis-Kerry) Part of your strategy when interviewing someone - - specifically my client - - is to say or do certain things in order to get them to provide you information - - is that right?

A Certainly.

Q Okay. And if it happens that you will say or do certain things that may not be true, it's still part of your effort to get them to give you information.

A Only within certain limits.

Q Right. I understand you have your limits, but you will still bend the truth - - is that a fair statement?

MR. AHSENS: Your Honor, I'm going to object to this. It's irrelevant and immaterial. The Supreme Court of Missouri has decided that proactive interrogation techniques are proper.

THE COURT: Sustained.

MS. DAVIS-KERRY: And Judge, I'm not disputing what Mr. Ahsens has just given us. However, I think it goes to the overall credibility of the statement of my client.

THE COURT: You've already discussed that, counselor.

[930] Q (By Ms. Davis-Kerry) Before leaving for St. Louis County in order to arrest my client, you had had a conversation with the then Phelps County Prosecuting Attorney, Pat King - - is that correct?

A Yes, ma'am, I had.

Q All right. You were under direction from Pat King to make a case against my client.

A To do my best to make a case - - yes, ma'am.

Q Uh-huh. After Detective Clinton - - or Officer Clinton from St. Louis County arrested my client, he transported her over to the Police Department in St. Louis County - - right?

A Yes, ma'am.

Q And you and Rodger Windle followed him in one of your vehicles.

A In mine - - yes, ma'am.

Q In yours - - all right. And you and Rodger Windle were together.

A Yes, ma'am.

Q And you and Windle discussed your strategy about how you were going to question my client - -

correct?

A That's correct.

Q All right. And when you get to St. Louis County, there's a brief conversation between you and the St. Louis County Officer Clinton where Clinton told you that **[931]** he did not tell her her rights, but that he did tell her that she would talk to you - - is that correct?

A I'm pretty sure he told me he didn't ask her any questions, but that she had asked him some questions and he had told her that from what he knew, we had a very strong case and it would be best to tell the truth.

Q Okay. So Clinton's telling her that you have a strong case and you leave her in this room - - tell me about this room that you conducted the interview in.

A It's a very basic interview room.

Q Small room.

A Yes, ma'am.

Q Interior room.

A Yes, ma'am.

Q No windows.

A I believe there's a mirror.

Q Okay. A mirror for people to look in.

A I don't know if they had an observation room on the other side or not. They had cameras.

Q All right. But was it an observation mirror?

A I couldn't tell from looking at it. You always tend to make that assumption I think in a room like that, but I don't know for sure.

Q All right. She's not free to leave.

A No ma'am.

[932] Q And she is under arrest.

A Yes, ma'am.

Q But you specifically do not want to advise her of her rights at that time.

A That's correct.

Q And you want to talk to her first and you want to get her to admit before you turn on the tape recorder - - is that part of your strategy?

A As long as she doesn't say she doesn't want to

talk - - yes - - we intend to keep talking.

Q Okay. You put her in this interview room and you leave her there for several minutes before you start the interview - - is that right?

A Yes, ma'am - - she was in there for a little bit.

Q Can you tell the jury how long you think she was in there before you started the interview?

A I would guess probably fifteen to twenty minutes.

Q All right. So you leave her there in this room by herself for fifteen to twenty minutes.

A Yes, ma'am.

Q All right. Is that part of your strategy or your technique.

A Yes, ma'am.

[933] Q To create some stress - - is that right?

A To let them think about their situation - - yes, ma'am.

Q And that could create some stress - - is that correct?

A In a guilty person, I would think it would create a considerable amount.

Q It could create a considerable amount of stress in someone who's not guilty too.

A I would have to disagree.

Q All right. It's your opinion - - isn't it?

A Yes, ma'am.

MR. AHSENS: Your Honor, I'm going to object. She asked for his opinion.

THE COURT: Yes, she did - - sustained.

Q (by Ms. Davis-Kerry) During your interview with her, at a couple of occasions, you would pull your chair very close to her - - is that right?

A Yes, ma'am.

Q And you would stare at her for several minutes - - is that correct?

A Certainly.

Q Okay. And this is also part of your strategy.

A I'm not sure . . .

Q Part of your technique.

[934] A I generally make eye contact, or try to, with someone I'm interrogating the whole time.

Q All right. And you're very - - physically you're very close to her - - is that right?

A Probably - - we're at opposing - - or the same corner of the table. I'm on this side of the corner and she's on this side.

Q But you don't have a table between you.

A No, ma'am. The table in a proper interview room like that one is put against the wall.

Q You make her look at pictures of Donald Rector.

A I put a picture of Donald Rector in front of her.

Q All right. Now at some point in this interview, you want - - I'm sorry. At some point in this interview, my client tells you that the next day is the funeral for her son, Jonathan Seibert. Do you recall that?

A I believe that was something that she had mentioned when she told me she was thinking of hurting herself after the interview.

Q Okay. She wanted to go to the funeral for Jonathan - - is that correct?

A She asked me what the chances would be.

Q And you told her you didn't know or you would see.

[935] A That's correct.

Q In fact, she did not attend the funeral for her son - - did she?

A I don't know.

Q You didn't take her - - did you?

A No, ma'am, I did not.

Q And once she was arrested, she was never released from custody to the best of your knowledge - - is that right?

A That's correct.

Q Okay. Pat tells you that she knew the trailer was to be burned - - correct?

A Yes, ma'am.

Q All right. But you want her to admit that she

knew Donald was to die - - is that right?

A I wanted her to tell the truth.

Q You wanted her to admit that Donald was to die.

A As long as that was the truth - - yes, ma'am.

Q All right. But she doesn't admit that - - not - - you say that to her and she doesn't respond - - does she?

MR. AHSENS: Your Honor, I'm going to object again at this point. I think the recorded statement has been played - - the jury has heard it. Again we're trying to characterize or mischaracterize this in some fashion and I think that's improper.

[936] THE COURT: The jury will be reminded that it's their recollection of the facts as they occur - - not what the attorneys say. You may continue your questioning.

Q (by Ms. Davis-Kerry) I'm talking about the interview before the tape recoding was turned on - - all right? Let's clarify that.

A Oh - - okay.

THE COURT: Excuse me - - then you may continue, counselor.

MS. DAVIS-KERRY: Thank you, Your Honor.

Q (by Ms. Davis-Kerry) All right. Before you turn on the tape recorder, you interview my client for quite awhile - - isn't that correct?

A Yes, ma'am.

Q She's arrested at 3:00 in the morning and you let her sit in this interview room by herself for some twenty - - what did you say - - twenty minutes or so?

A Fifteen to twenty.

Q Fifteen to twenty minutes - - and then the tape itself is not turned on until - - what is it - - 4:30?

A That's correct.

Q Okay. So we have some ninety minutes - - is that fair to say?

A There is another fifteen to twenty minutes when she was given a break, a cup of coffee, allowed to smoke a **[937]** cigarette. Then the tape was turned on.

Q But you interview her for quite some time before ever turning on the tape - - right?

A Yes, ma'am.

Q And this is the interview done without advising her of her Constitutional rights - - is that correct?

A That's correct.

Q And this is part of your technique - - isn't that right?

A Yes, ma'am.

Q All right. And in the interview before the tape was turned on, Pat admits to you that she knew the trailer was to be burned.

A That's correct.

Q And you say to her - - "Donald was also to die in his sleep." You say that - - correct?

A Yes, ma'am.

Q All right. She doesn't say you're right.

A At the point when I said that, she began to cry and didn't answer me at first - - no, ma'am.

Q All right. You squeeze her arm.

A Gently - - yes, ma'am.

Q All right. And you actually say - - "Donald was to die in his sleep" - - more than once - - is that right?

A I probably did - - yes, ma'am.

[938] Q Okay. So you've repeated it.

A I'm sure I did - - yes, ma'am.

Q And she's sobbing - - is that right?

A Yes, ma'am.

Q But you don't have a clear admission yet - - do you?

A Not at that moment - - no, ma'am.

Q Okay. And you go through this for several minutes - - or for actually well over half an hour - - is that fair to say?

A Through the interview?

Q Uh-huh - - the interview before the tape recorder was turned on.

A That's fair to say.

Q Okay. Then at some point you turn on the tape

recorder.

A Yes, ma'am.

Q Because you've finally broken her down - - is that right?

MR. AHSENS: I'm going to object to this characterization, Your Honor. If she has a question, that's fine, but I don't believe that's proper.

THE COURT: Sustained.

Q (by Ms. Davis-Kerry) She has said what you wanted to hear and you turn on the tape recorder.

[939] A Well, what she had done was said part of what we believed matched the evidence, so we believed it to be the truth and we went ahead and took a formal statement.

Q Okay. And you tell her when you turn on the tape that you're going to help her through by asking the questions - - is that right?

A That's correct.

Q These are leading questions - - aren't they?

A They're questions she could have answered any way she wanted to, ma'am.

Q They're leading questions though - - aren't they?

MR. AHSENS: I'm going to object to that - - that calls for a conclusion.

THE COURT: Argumentative - - sustained.

Q (by Ms. Davis-Kerry) You're trained in the technique to ask a leading question - - aren't you?

MR. AHSENS: I'm going to object. It's irrelevant as to the training. What he did may be relevant.

THE COURT: Sustained.

MS. DAVIS-KERRY: The jury can recall. They've heard the tape and they've seen the transcript.

MR. AHSENS: I'll object to the comment - - that's instructions from counsel to the jury. They're improper.

THE COURT: Yes - - the Court will give the **[940]** instructions in this case.

Q (by Ms. Davis-Kerry) Even on this tape, Pat told you that they were to try to get Donald out - - is that right?

A Yes, she did.

Q And she told you she just figured that they would do that - - get him out - - is that right?

A My understanding and what I recall is that she said they were to try to get him out - - yes.

Q And that she never thought that they wouldn't get him out. That's also on that tape - - isn't it?

A I don't know if she exactly said that. I'm not sure.

Q She figured they would get him out.

MR. AHSENS: Your Honor, again, I'm going to object. The tape has been played. Now I think we're - - I don't know what we're doing here, but this is not proper questioning.

THE COURT: Are we talking about the time on the tape, counselor?

MS. DAVIS-KERRY: I'm talking about the time on the tape.

THE COURT: Then the tape is the best evidence of what occurred on the tape.

MS. DAVIS-KERRY: And I'm asking this officer his recollection of that tape.

[941] MR. AHSENS: His recollection is irrelevant. We've played the tape.

THE COURT: Sustained. It is the jury's recollection of the tape that counts, counselor - - not this officer's recollection of the tape.

MS. DAVIS-KERRY: May I continue, Judge?

THE COURT: You may.

Q (by Ms. Davis-Kerry) A number of times you say to her - - "He was supposed to die in his sleep."

A Yes, ma'am.

Q Okay. You say it - - correct?

A Yes, ma'am.

Q Okay. Now you made reference to this point in your interview with my client where you thought she was going to hurt herself - - is that right?

A It was actually after the interview - - yes, ma'am.

Q Okay. And you had some concerns of what - -

she was suicidal?

A She had told me she was thinking of hurting herself.

Q Okay. And you advised her that that would not be a good thing to do because she still had children that needed her.

A Yes, I did.

[942] Q Okay. So you didn't want her to do anything about taking her own life at that point - - is that correct?

MR. AHSENS: I'm going to object to that as irrelevant - - what he - - -

THE COURT: Sustained.

Q (by Ms. Davis-Kerry) You tried to prevent her from taking her own life.

A Yes, ma'am.

Q And that was a sincere attempt on your part

MR. AHSENS: Objection - - irrelevant and immaterial.

THE COURT: Sustained.

Q (by Ms. Davis-Kerry) Do you think it's an irony that you tried to save her from taking her own life?

MR. AHSENS: Same objection.

THE COURT: And again sustained.

[Sticker: State's Exhibit 37]

227 S. Central, Clayton
Div Crim Invest.
St. Louis Co. P.D.

ST. LOUIS COUNTY DEPARTMENT OF POLICE

WARNING & WAIVER FORM

Before we ask you any questions, you must understand what your rights are:

/s/ PDS ✓ 1. You do not have to make any statement at this time and have a right to remain silent.

/s/ PDS ✓ 2. Anything you say can and will be used against you in a court of law.

/s/ PDS ✓ 3. You are entitled to consult with an attorney before any interview and to have an attorney present at the time of interrogation.

/s/ PDS ✓ 4. If you cannot afford an attorney, one will be appointed for you.

_____ 5. (Juvenile Suspects Only) If you are fourteen years of age or older you could be tried in court as an adult.

I have read the above statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

/s/ x Patrice D. Seibert — /s/ x February 17, 1997
Signature of Suspect — Date

/s/ x 4:30 a.m.
Time

Witness — Date — Time

I hereby certify that the foregoing Warning and Waiver was read by me to the above suspect, that the suspect also read it, and the suspect has affixed his (her) signature hereto in my presence.

/s/ Richard E. Hanrahan 999
Signature - Police Officer

/s/ Rodger R. Windle 1474
Witness (In the case of a juvenile suspect, the attending Deputy Juvenile Officer)

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ROLLA POLICE DEPARTMENT
INTERVIEW WITH:

PATRICE SEIBERT

CASE # 97000335

FEBRUARY 17, 1997

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[Sticker: State's Exhibit 43]
facsimile copy of Exhibit 43

[2] SIDE 1

Rick My name is Detective Richard Hanrahan. I'm with the Rolla Police Department. Today's date is February 17th, 1997. It's about 0430 hours in the morning. I'm in the interview room of the division of criminal investigations of the St. Louis County Police Department, located at 227 South Central Street in Clayton, Missouri. With me here is an investigator from the Fire Marshall's office. Would you identify yourself?

Rodger I'm Rodger Wendall with the Missouri Division of Fire Safety, investigator.

Rick And we're here this morning talking to Patrice Seibert.

Patrice Right.

Rick Patrice, would you state your full name?

Patrice Patrice Diane Seibert.

Rick And what's your date of birth, Patrice?

Patrice January 18, 1958.

Rick Ok. And Patrice, before we go any further, I have to read your rights to you, you understand that?

Patrice Yes.

Rick Ok. You do not have to make any statement at this time and have a right to remain silent. Do you understand that?

Patrice Yes.
Rick Ok. Anything you say can and will be used against you in a court of law. Do you understand that?
Patrice Yes.
Rick You're entitled to con...consult with an attorney before an interview and have an attorney present at the time of interrogation. Do you understand **[3]** that?
Patrice Yes.
Rick If you cannot afford an attorney, one will be appointed for you. Do you understand that?
Patrice Yes.
Rick Having your rights in mind, 'trice, are you willing to go ahead and answer questions for us?
Patrice Yes.
Rick Ok. What I need you to do...is I need you to initial next to every one of these check marks where I read the rights to you, and I need you to sign and date and time here.
(Pause in the conversation)
Patrice (inaudible) today?
Rick Today is the seventeenth of February, two-seventeen-ninety-seven. I know.
(Pause with background noises)
Rick Ok, 'trice, we've been talking for a little while about what happened on Wednesday the twelfth, haven't we?
Patrice Yes, we have.
Rick Ok. What I'm gonna do is I'm gonna try to help you along by asking you questions, Rodger and I are. And we'll let you answer them, ok?
Patrice Ok.
Rick Now on Wednesday the twelfth, what happened to set everything in motion?
Patrice Jonathan died.
[4] Rick Ok. And who found Jonathan?
Patrice I did.

Rick And 'bout what time of day was that 'trice?
Patrice Somewhere 'round eight, eight-thirty.
Rick Ok. And what did you do?
Patrice I woke up Michael and told him.
Rick That's your son Michael?
Patrice Yes.
Rick And then what happened?
Patrice I sent him to go get his older brother, Darian.
Rick And where was Darian at?
Patrice Up at Derrick's house.
Rick That's Derrick Roper's house...
Patrice Right.
Rick And then what happened?
Patrice And the boys came down to the house and...I told them about it.
Rick Ok. Were you pretty scared right then?
Patrice Yes I was.
Rick And what was your fear? What were you afraid of?
Patrice I was afraid of...child abuse, neglect, that type of thing.
[5] Rick And why were you afraid of that?
Patrice Because Jonathan, bein' severely handicapped, I hadn't gotten in contact with any of the doctors or anything, for like, his bedsores and stuff that, you know, I had been doctorin'.
Rick So you felt like they're probably gonna give you a really hard time?
Patrice Yes.
Rick Ok. So what happened next?
Patrice Well I...I needed to try and find a way to keep from havin' people come in and question me about, you know, Jonathan.
Rick And, and what'd you come up with?
Patrice (Sighs)
Rick It's ok, take your time.
Patrice Basically....I knew the trailer was gonna be burned down.
Rick And how did you know that?

Patrice (Pause) 'Cause that'd been the easiest way to dispose of the body....
(Unknown) Mm-hmm.
Patrice ...you know, without getting questions basically being asked.
Rick Ok. Now when you all are talkin' about burning the trailer down, who's there?
Patrice Derrick, Skate...
Rick Jeremy?
Patrice Yes.
[6] Rick Ok.
Patrice ...Michael and myself.
Rick Was Darian not there?
Patrice Oh! Darian was there, yes.
Rick Ok.
(Coughing)
Rick Do you remember who first brought up the idea of burning the trailer?
Patrice I think it was Derrick.
Rick Ok. And then from there you all discussed it?
Patrice Yeah (inaudible).
Rick Ok. And in your discussion, did you all decide that that was the best way to make sure that nobody would ask any questions about Jonathan's condition?
Patrice Yes.
Rick Ok. Was Donald in the house when you had this discussion?
Patrice No, he was at a doctor's appointment.
Rick Ok. So what happened next?
Patrice Derrick and Darian left to go get me some cigarettes.
Rick And?
Patrice Then they came back. I got my cigarettes, and then they left again, for a while.
Rick Did you give them some money?
[7] Patrice I gave them money when they went to go get my cigarettes.
Rick And did you know or did you believe that that

was gonna be used to buy gas?
Patrice No I did not. I didn't know...but I know I didn't get any change back. 'Cause he had asked me for three bucks, but I didn't get any change back.
Rick Ok. So what happened when they came back?
Patrice Derrick handed me my pack of cigarettes and this receipt...that had like oil, or somethin' on it.
Rick Where was the receipt from?
Patrice I think it was O'Reilly. And I handed it back to him.
Rick We've got a receipt right now from O'Reilly's for a five gallon gas can, ok?
Patrice I thought it was oil or somethin' on there.
Rick So they left. What happened next?
Patrice I left with David.
Rick Ok. David who?
Patrice David Payne.
Rick Ok. And David knew that Jonathan had died?
Patrice No, I never told him.
Rick Ok. When did you come back?
Patrice Oh...somewhere around three.
Rick And then what happened?
Patrice The kids came home.
[8] Rick Ok. And how'd you handle the kids around Jonathan? Did they play outside or what'd you do?
Patrice Well, just basically, they (inaudible) come in, they do their homework. Watch the TV or it was, it was pretty nice day, you know?
Rick Um-hmm.
Patrice Donald took the kids to the basketball court.
Rick So they went down and shot some hoops. Ok, and then what happened?
Patrice About six o'clock...kids came back in...and Derrick and Darian showed up.
Rick And you talked to 'em some more?
Patrice I didn't talk to 'em anymore than that.
Rodger When did Donald show up?

Patrice In the morning.
Rodger After his doctor's appointment (inaudible)?
Patrice He showed up there at the house.
Rodger Ok, so Donald's there...when, whenever Derrick and Darian showed up, right?
Patrice Right.
Rick Ok, and what was Donald doing when they showed up there?
Patrice I can't remember. David came in with me. Um...he was fixin' somethin' to eat.
Rick Ok.
Patrice That was 'round three or so, 'cause he said he needed to take his medicine.
[9] Rick Now, in discussion you told us, you told us that there was a understanding about Donald.
Patrice Yes.
Rick Did that take place earlier that morning?
Patrice Yes.
Rick And what was the understanding about Donald?
Patrice If they could get him out of the trailer, to take him out of the trailer.
Rick And if they couldn't?
Patrice I, I never even thought about it. I just figured they would.
Rick 'Trice, didn't you tell me that he was supposed to die in his sleep?
Patrice If that would happen, 'cause he was on that new medicine, you know...
Rick The Prozac? And it makes him sleepy. So he was supposed to die in his sleep?
Patrice Yes.
Rick Ok. So when Derrick and Darian come back the last time, what happens?
Patrice Took thekid, well...(sigh) I mean...Derrick went out and played basketball with Patrick and Shaun out in the road for a while.
Rick Mm. And then what happened?
Patrice Church van came, and I put the kids on the, on

the van.
Rick Ok. Had you already called for a taxi?
Patrice No, I didn't call for a cab until after they got on the church bus.
Rick Ok. And is that the next thing that happened? You were leavin' for a **[10]** reason, weren't you?
Patrice Yes, I was.
Rick And what was your reason for leavin?
Patrice I didn't want to be there when the trailer burned down.
Rick And so after you left, what was the next thing that happened?
Patrice I went to David's. He wasn't there, so I walked over to my friend's house on fifth street.
Rick And who is that friend?
Patrice Netty Payne.
Rick Ok. And how did you find out about the fire? Someone come and get you?
Patrice No. I walked back over to David's about 45 minutes later. And then about 8:30 or whatever, David's sister-in-law came over and got us...or, I should say got me.
Rick And told you about the fire?
Patrice Well, actually she didn't. She just told me to get in the car; there were three other people in there. Skate was one of 'em. 'Cause I don't know the other two. And then you told me the trailer had burnt down and Darian and Derrick had gotten burned in the trailer.
Rick And that's when you first started to have to go through the stress and strain of acting surprised about the fire?
Patrice Yeah.
Rick 'Trice...are you truly sorry for what's happened?
Patrice Yes, I am.
Rick I believe you. I've got to sit down and talk to Donald's momma in the **[11]** morning. Is there anything you'd like me to tell her for you?
Patrice Just tell her I'm sorry. I didn't mean for her

son...

Rick You didn't mean for him to end up...like that? It'd surely been a lot easier on her if he'd died in his sleep like he was supposed to. Rodger, do you have anything you need to ask?

Rodger One more thing and it's kinda immaterial, but what did you take with you when you left, Patrice, when you (inaudible)?

Patrice A picture that I had bought for David and then Michael wanted some clothes, so I had, uh, um, duffel bag with his clothes in it.

Rodger So Michael knew the trailer was gonna burn, too (inaudible)?

Patrice No...

Rodger (inaudible)

Patrice ...he had called me...

Rodger Ok. I understand.

Patrice ...and I asked him what he wanted and he said some outfit on a chair in the back bedroom. And I said, "which one," and he goes, "Well, just bring 'em all," 'cause he was gonna come by David's and pick 'em up. See Michael ne...Michael didn't know. And I, bottom line, I, I think Skate thought I wa...you know, that this wasn't gonna happen either. They both left.

Rodger Ok, Patrice, I don't have anything else.

Rick Is there anything that want to say for the record on your behalf?

Patrice I'm scared.

Rick I understand. For the record and on your behalf, my understanding is that you knew that Donald could die in there in his sleep, but you never meant for him to get beat up. Is that true?

[12] Patrice That's true.

Rick Ok.

Rodger And you knew about the trailer was gonna burn?

Patrice Yes, I did.

Rodger And that it was gonna be set on fire, is that right?

Patrice Yes.

Rick Ok, 'Trice, if you don't have anything else to say, I'm gonna stop the tape recorder. Ok? Rodger?

Rodger I have nothing further.

Rick I'm stopping the tape at approximately twelve minutes before five in the morning.

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